

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Reorganization and Revision of)
Parts 1, 2, 21, and 94 of)
the Rules to Establish a New)
Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

WT Docket No. 94-148

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To: The Commission

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**PETITION FOR PARTIAL CLARIFICATION
AND RECONSIDERATION**

ASSOCIATION OF AMERICAN RAILROADS

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SUMMARY

AAR supports the Commission's goals of streamlining and consolidating the rules governing Common Carrier Fixed Services and Private Operational Fixed Services ("POFS"). In pursuing these laudable goals, however, the Commission must ensure that the rules it adopts reflect the unique characteristics of the systems it is regulating. Specifically, the Commission should ensure that in merging the rules governing POFS and Common Carrier Fixed Services it does not fail to distinguish the important differences in the uses of these services. AAR therefore urges the Commission to reconsider its decision and modify the Part 101 definitions to preserve the essential POFS concept of licensee use of facilities to meet internal needs. The Commission must also ensure that the rules it adopts in this proceeding do not place an undue burden on the systems it is regulating. AAR therefore urges the Commission to reconsider the proposed definition of Multiple Address System and the proposed channel loading requirements for point-to-point microwave systems.

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Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, the Association of American Railroads ("AAR"), by its attorneys, hereby respectfully seeks clarification and/or partial reconsideration of the Federal Communications Commission's Report and Order ("Report and Order") adopted February 8, 1996, in the above-captioned proceeding.^{1/}

On balance, AAR applauds the Commission for the result of its efforts to streamline and consolidate the rules governing Common Carrier Fixed Services and Private Operational Fixed Services ("POFS"). New Part 101 significantly reduces the regulatory burdens on both Common Carrier Fixed Services and POFS by eliminating many out-dated rules and redundancies. AAR is pleased that the Commission incorporated several of its and other commenters' suggestions in the Report and Order adopting the new Part 101. There are several parts of the Report and Order,

^{1/} 61 Fed. Reg. 26.670 (1996).

however, which AAR believes the Commission should reconsider or which need some clarification. Specifically, AAR requests that the Commission reconsider; (1) the new definition of operational fixed station; (2) the definition of Multiple Address System; and, (3) the new channel loading standards.^{2/}

I. INTRODUCTION

Throughout this proceeding, AAR has endeavored to assist the Commission in its effort to streamline regulations for fixed services. In its Comments, AAR expressed its overall support for the Commission's efforts to streamline the rules governing fixed services and made several suggestions to improve the Commission's proposal.^{3/} In

^{2/} AAR also requests that the Commission clarify its new frequency allocations in New Part 101. Present Section 94.61(b) lists the frequency bands available for Private Operational Fixed Microwave Service. Under Section 94.61(b), three of these bands currently used by POFS users, 1850-1990 MHz, 2130-2150 MHz and 2180-2200 MHz, are conditioned by Footnote 35. Footnote 35 provides that "[n]ew facilities in these bands will be licensed only on a secondary basis. Facilities licensed or applied for before January 16, 1992, are permitted to make modifications and minor extensions and retain their primary status." In new Section 101.101, the corresponding section to present Section 94.61, these bands are allocated to existing Private Operational Fixed Point-to-Point Microwave Service users on a co-primary basis with PCS and other Emerging Technology providers. New Section 101.147 covers frequency allocation and retains the exact language of Footnote 35 in new Footnote 20. Rather than applying the same restriction to the same bands, however, new Section 101.147 applies a different restriction to these bands in new Footnote 22, which provides "[f]requencies in these bands are for the exclusive use of Private Operational Fixed Point-to-Point Microwave Service." AAR believes that this new restriction is inconsistent with the restrictions in present Section 94.61(b) and requests that the Commission clarify that new Footnote 22 was applied to the 1850-1990 MHz, 2130-2150 MHz and 2180-2200 MHz bands in error and that new Footnote 20 should apply to these bands instead.

^{3/} Comments of AAR in WT Docket No. 94-148, filed February 17, 1995.

its Reply Comments, AAR again suggested improvements to the Commission's proposal.^{4/} AAR representatives also participated in the TIA/NSMA working group which developed technical rule proposals for Part 101.^{5/}

While AAR supports the Commission's efforts to streamline regulations on fixed services and to consolidate provisions of the rules where appropriate, it has sought to ensure that the unique identity of POFS is not lost in the merger of the rules governing fixed microwave services. AAR repeatedly has urged the Commission to alter several of its proposals which are detrimental to POFS users. With the adoption of the Report and Order, the Commission has responded to several of AAR's comments and suggestions. A number of the Commission's original proposals have been modified to better serve the needs of both the POFS and the Common Carrier Fixed Service. However, AAR believes that new Part 101 could be improved further if the Commission reconsiders and/or clarifies several provisions of the new rules.

II. ARGUMENT

A. THE DEFINITIONS IN NEW PART 101 FAIL TO RECOGNIZE THE UNIQUE IDENTITY OF THE PRIVATE OPERATIONAL FIXED SERVICES

As noted, AAR supports the Commission's overall goal of streamlining the regulatory scheme governing POFS and Common Carrier Fixed Services and agrees that many of the regulations can be merged to avoid redundancy. In drafting its final

^{4/} Reply Comments of AAR in WT Docket No. 94-148, filed March 17, 1996.

^{5/} See id. at 2.

rules, however, the Commission must not ignore the fact that POFS facilities have unique and vitally important uses.

In its Comments and Reply Comments, AAR sought to ensure that the merger of Parts 94 and 21 does not result in the loss of the POFS' unique identity. In this regard, AAR urged the Commission not to change the definition of operational fixed station contained in present Section 94.3. AAR argued that to do so would result in the loss of the POFS' unique identity and could result in the compromise of its essential priorities of safety and reliability. Any compromise in the quality of the railroads' communications networks could endanger both life and property.^{6/}

The railroads and other private service licensees rely on their microwave systems for critical public safety operations. These important uses of the fixed services give them unique characteristics distinguishable from Common Carrier Fixed Service use of microwave systems. AAR member railroads use their fixed microwave systems for the internal support of railroad operations, not to provide communications services to others. While a number of the characteristics of the POFS and Common Carrier Fixed Services are enough alike to warrant similar regulatory treatment, the uses of each system are demonstrably different. This difference should be recognized by the Commission in the definition of private operational fixed services.

6/ The railroads rely on fixed service communications systems to support critical safety functions for more than 1.2 million train cars on more than 215,000 miles of track. These systems not only remotely control the switching of tracks necessary for safe routing of trains through busy depots and freight yards, but also relay critical telemetry data from trackside defect detectors located throughout the rail network.

Under the present definitional framework of Parts 21 and 94, there are three separate and distinct types of use for fixed point-to-point microwave stations: (1) common carriage, (2) private carriage, and (3) private operation. The first two involve the offering of communications service for hire to customers. The third does not; instead, the private operation station is operated for the sole use of the licensee. Unfortunately, the definitional framework of new Part 101 omits the third category of use.

Present Section 94.3 contains the following definition of the term "Operational-Fixed Station":

A Fixed Station not open to public correspondence, operated by and for the sole use of those persons or agencies operating their own radio communication facilities. This term includes all stations licensed in the fixed service under [Part 94].

The above definition embodies the concept of "self-service" which is the fundamental underpinning of the allocation framework for the Part 94 frequencies, established long ago in the Commission's landmark Above 890 decision^{7/}, which resulted from the need for industrial and transportation companies to operate their own communication facilities in situations where common carriers either could not or would not provide the level of specialized service that was required.

In the definitional section of new Part 101, this "self-service" concept is missing. The new definition of Operational Fixed Station ("A private fixed station not open to public correspondence,") does not incorporate the "self-service" concept; it merely

7/ Allocation of Frequencies in the Bands Above 890 MHz, 27 FCC 359 (1959).

excludes "public correspondence." Thus, an operational fixed station could include one operated on a private carrier basis, i.e., one operated by "an entity licensed in the private service and authorized to provide communication service to other private service eligibles on a commercial basis."

Similarly, the definition in new Part 101 of Private Operational Fixed Point-to-Microwave Service does not incorporate the concept of "self-service," either. That term is defined as: "A private line radio service rendered on microwave frequencies by fixed and temporary fixed stations between points that lie within the United States or between points to its possessions or to points in Canada or Mexico." The operative phrase in this definition is Private Line Radio Service, which, in turn, is defined in new Part 101 as:

A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.

Again, this definition does not incorporate the essential POFS concept that a station is operated for the sole use of the licensee. The definition of "Private Line Radio Service" incorporates the concepts of "customer" and "authorized users," both of which clearly refer to the provision of a commercial service to others, but does not incorporate the notion of the licensee's use of the facility to meet its own communications needs.

To remedy this omission, AAR recommends that the Commission modify the definition of "Private Line Radio Service" to include the phrase "of the licensee," as set forth below:

A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability [of the licensee] or of a particular customer and authorized users during stated periods of time.

The inclusion of the phrase "of the licensee" will restore to the definitional framework of Part 101 the essential POFS concept of licensee use of facilities to support the licensee's own communications needs.

**B. THE DEFINITION OF MULTIPLE ADDRESS SYSTEM IS
INFLEXIBLE AND SHOULD BE RECONSIDERED**

In every proceeding that proposes or promulgates regulatory rules, the Commission is required to conduct a regulatory flexibility analysis. The obvious purpose of this analysis is to promote regulations which are flexible and are relevant to those entities affected by the regulations. The definition of Multiple Address System ("MAS") in Section 101 of the new rules is the type of inflexible rule the Commission should seek to avoid: the rule places an unnecessary economic burden on many private system users.

The new rules maintain Part 94's definition of MAS and state that "each master station must serve at least its own four remotes operating on its assigned frequency."^{8/} In its Comments, AAR argued that this definition should be revised to require a MAS to serve multiple remotes, rather than specify a minimum requirement. This would provide licensees with needed flexibility in designing and maintaining their fixed private systems. AAR explained that due to topography and the particular

^{8/} Proposed § 101.3.

routing of railroad rights-of-way, it is often not possible for a railroad system to have propagation to four remotes.

The Commission declined to revise the definition, however, claiming that to do so would promote spectrum inefficiency.^{9/} In noting that it had already discussed the required number of remote sites in a prior proceeding, the Commission stated that its policy was that allowing a lesser number of remotes would be "spectrally inefficient." The Commission then stated that "[t]here is nothing on the record to support changing this policy. Accordingly, we are declining to lower the required number of remotes. Applicants that need to serve fewer locations should apply for point-to-point frequencies."^{10/}

AAR submits that any spectral inefficiency associated with accommodating a two or three-remote MAS system would be negligible compared with the economic inefficiencies inherent in requiring licensees to apply for up to three separate point-to-point licenses. Many fixed microwave users would benefit from having the flexibility to deploy some Multiple Address Systems using two, three, or four remotes. In pursuing its laudable goal of simplifying and streamlining the fixed microwave service regulations, the Commission must seek to avoid inflexible regulatory standards which do not reflect the practical realities of the systems it is regulating.

9/ Report and Order at ¶ 47.

10/ Id.

Requiring a MAS to serve a specified number of remotes is just such an inflexible standard. AAR recommends that the Commission adopt the following definition of a MAS:

A point-to-multipoint radio communications system, either one-way or two-way, utilizing frequencies in accordance with § 101.147, and serving [multiple] remote stations. Each master station must serve [multiple] remotes. The remote stations must be scattered over the service area in such a way that two or more point-to-point systems would be needed to serve these remotes.

By revising the definition of MAS to require multiple remotes, rather than a specified minimum, the Commission would provide fixed users with the flexibility they need to operate their communications networks safely and efficiently. AAR therefore respectfully requests that the Commission reconsider the definition of MAS in its proposed rules and adopt the definition suggested above.

C. THE PROPOSED CHANNEL LOADING REQUIREMENTS ARE EXCESSIVE AND INFLEXIBLE AND SHOULD BE RECONSIDERED BY THE COMMISSION

In its Reply Comments, AAR supported the statement of the American Petroleum Institute ("API") that the Commission's proposed channel loading standards are excessive and should be relaxed.^{11/} AAR and API noted that this was especially true for private fixed systems where system loading will vary from hop to hop and over time. The Commission decided not to alter the proposed standards, noting that it had decided in a prior proceeding that these standards "would promote efficient use of the

^{11/} Reply Comments of AAR at 4.

spectrum."^{12/} Again, AAR notes that any slight spectral inefficiency associated with more flexible channel loading standards would be negligible compared to the tremendous economic inefficiencies that would result from requiring fixed users to maintain a mix of facilities in order to comply with the proposed standards. Large, industry-wide efficiencies could be realized if more flexible loading standards are adopted by the Commission. This would enable operators to maintain as much consistency as possible throughout a system. As noted by API such "[e]quipment consistency improves reliability and lowers costs through (a) simplified training and testing, and (b) a simplified spare parts inventory."^{13/}

In order to promote flexibility and to allow POFS systems to operate more economically, AAR therefore requests that the Commission reconsider its proposed channel loading requirements. If the Commission decides not to reconsider these requirements, AAR requests the Commission to clarify whether it intends to continue to "liberally waive loading requirements" for all POFS systems as it stated it would for displaced 2 GHz licensees.^{14/}

III. CONCLUSION

For the foregoing reasons, AAR respectfully requests the Commission to reconsider and/or clarify portions of new Part 101. The Commission must ensure that

^{12/} Report and Order at ¶ 77. While the Commission refused to alter the proposed channel-loading standards, it noted that for 2 GHz licensees displaced to bands above 3 GHz, it would "liberally waive loading requirements." Id. at ¶ 76.

^{13/} Comments of API at 15.

^{14/} See Fn. 10, supra.

in merging the rules governing POFS and Common Carrier Fixed Services it does not fail to distinguish among the important differences in the uses of these services. AAR therefore urges the Commission to reconsider its decision and modify the Part 101 definitions to preserve the essential POFS concept of licensee use of facilities to meet internal needs. AAR also urges the Commission to reconsider the proposed definition of Multiple Address System and the proposed channel loading requirements for point-to-point microwave systems.

Respectfully submitted,

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